

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|---------------------|---|--------------------|
| ANTON CARLTON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 3:07-0895 |
| |) | Judge Echols |
| STATE OF TENNESSEE, |) | |
| |) | |
| Respondent. |) | |

ORDER

This matter is before the Court on a Report and Recommendation (R & R) (Docket Entry No. 16) in which the Magistrate Judge recommends granting Respondent's unopposed Motion to Dismiss (Docket Entry No. 12) and dismissing without prejudice Petitioner's habeas corpus petition. The R & R was issued on September 5, 2008, and no objections have been filed thereto, even though the parties were informed in the R & R that any objections needed to be filed within ten (10) days of receipt of the R & R (Docket Entry No. 16 at 4).

Where, as here, no objections are made to the R & R, "[t]he district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." Fed.R.Civ.P. 72(b). Having reviewed the R & R and the file in this case, the Court finds that the Magistrate Judge was correct in determining that the habeas corpus petition should be dismissed without prejudice because

Petitioner has failed to show that he has exhausted available state remedies.

Accordingly, the Court rules as follows:

(1) The R & R (Docket Entry No. 16) is hereby ACCEPTED and APPROVED;

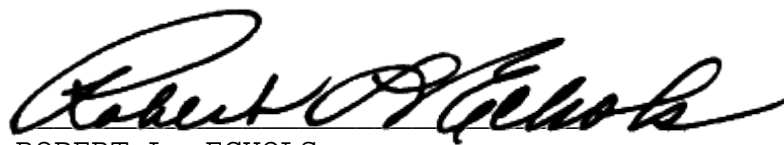
(2) Respondent's Motion to Dismiss (Docket Entry No. 12) is hereby GRANTED;

(3) This case is hereby DISMISSED WITHOUT PREJUDICE; and

(4) Entry of this Order on the docket shall constitute entry of a final judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

Further, because Petitioner cannot demonstrate reasonable jurists would find it debatable whether the Court was correct in determining Petitioner has failed to establish that he has exhausted his state remedies, a Certificate of Appealability will not issue. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

It is so ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", written in a cursive style.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE